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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 Elena Portnoy, et al.,

12 Plaintiffs,

13 v.

14 Charles DeMore, et al.,

15 Defendants.
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No. 2:23-cv-02485-KJM-SCR

ORDER

17 Plaintiffs Elena and Sergei Portnoy, proceeding pro se, request the district court allow
18 them to proceed in forma pauperis. Mots., ECF Nos. 24–25. Because the Portnoys previously
19 paid the district court’s civil filing fee on October 27, 2023, and because they recently filed a
20 Notice of Appeal, ECF No. 23, the court construes the motions as requests to proceed in forma
21 pauperis on appeal under Federal Rule of Appellate Procedure 24.

22 The court, having summarized the relevant background of this case in multiple previous
23 orders, incorporates the factual background by reference here. In summary, the Immigration and
24 Naturalization Service (INS), now the U.S. Citizenship and Immigration Services (USCIS),
25 denied the Portnoys’ applications to adjust Elena Portnoy’s status to that of a lawful permanent
26 resident. F & R at 1, ECF No. 19. The Portnoys filed suit against then-director of INS’s San
27 Francisco office, defendant Charles DeMore, and over the next twenty years the Portnoys filed

1 seven successive complaints against DeMore and other presiding district judges, alleging fraud
2 among other claims. *Id.* at 2.

3 Most recently, this court adopted the magistrate judge’s findings and recommendations,
4 and denied plaintiffs’ motion to void prior judgments, ECF No. 5, denied plaintiffs’ motions for
5 default judgment, ECF Nos. 9, 12 & 15, and dismissed the first amended complaint without leave
6 to amend, Prev. Order (Mar. 25, 2025), ECF No. 21. Plaintiffs appealed to the Ninth Circuit and
7 filed motions to proceed in forma pauperis on appeal. ECF Nos. 23–25.

8 Under the Federal Rules of Appellate Procedure Rule 24(a)(2), a district court must state
9 in writing the reasons for its denial. As previously explained by the assigned magistrate judge,
10 “[p]laintiffs are effectively attempting to relitigate *for the eighth time* two lawsuits concerning
11 Elena’s immigration status that the U.S. District Court for the Northern District of California
12 dismissed more than twenty years ago.” F & R at 1 (emphasis in original). The court finds the
13 plaintiffs’ appeal is not taken in good faith under the Federal Rules of Appellate Procedure.

14 The Portnoys also have not submitted evidence that they are unable to afford the costs
15 associated with continued litigation. While the in forma pauperis statute, 28 U.S.C. § 1915, does
16 not provide a definition of “what constitutes insufficient assets” for purposes of a grant of in
17 forma pauperis status, as a general proposition, “an affidavit is sufficient which states that one
18 cannot because of his poverty pay or give security for the costs and still be able to provide
19 himself and dependents with the necessities of life.” *Adkins v. E.I. Du Pont De Nemours & Co.,*
20 *Inc.*, 335 U.S. 331, 339 (1948) (internal quotations omitted). Sergei Portnoy’s motion indicates
21 he receives approximately \$1,226 per month in Social Security payments, an amount that without
22 other evidence about the Portnoys’ living costs, suggests an ability to pay the associated litigation
23 costs. *See* Sergei Portnoy Mot. at 1, ECF No. 24. Moreover, the Portnoys previously prepaid the
24 filings fees of the district court in late 2023. *See* Compl., ECF No. 1. While it is possible the
25 Portnoys’ financial status has changed, they offer no explanation to this effect.

26 For the foregoing reasons, the court **denies** the Portnoys’ motions to proceed in forma
27 pauperis on appeal. The clerk of court is directed to notify the parties and the court of appeals of
28 this order under Federal Rule of Appellate Procedure 24(a)(4).

1 This order resolves ECF Nos. 24 & 25.

2 IT IS SO ORDERED.

3 DATED: May 7, 2025.

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UNITED STATES DISTRICT JUDGE